IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2004

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR
and
THE HONOURABLE MR JUSTICE N.KANNADASAN

Criminal Appeal No. 1634 of 2002

1.Ravi
2.Jeeva
3.Mohan
4.Jagadeesan
5.Kanthammal ... Appellants/Accused Nos.1 to 5

Vs

State rep. by
Inspector of Police,
Sholingur, Vellore District. ... Respondent/Complainant
Cr.No.118/2001

Prayer: Appeal against the judgment passed by the learned Principal Sessions Judge, Vellore, in S.C.No. 43 of 2002 dated : 25.10.2002.

For Appellant : Mr.V.Karthic for
M/s.T.S.Gopalan & Co.

For Respondent : Mr.A.Kandaswamy
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by N. DHINAKAR, J)

The appellants, five in number, have preferred the above appeal against the conviction and sentence imposed upon them by the learned Principal Sessions Judge, Vellore, in S.C.No.43 of 2002. The appellants 1 to 3 were charged and convicted under Section 148 IPC., while appellants 4 and 5 were charged and convicted under Section 147 IPC. On being convicted under Section 148 IPC., appellants 1 to 3 were each sentenced to six months rigorous imprisonment and appellants 4 and 5 were each sentenced to pay a fine of Rs.1,000/- with a default sentence of six months rigorous imprisonment. On being charged and convicted under Section 341 IPC., appellants 1 and 2 each were sentenced to one month rigorous imprisonment, while appellants 3 to 5 were directed to pay a fine of Rs.500/- with a default

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sentence of one month rigorous imprisonment. The appellants 1 to 3 were also charged under Section 302 IPC. The learned trial Judge, while acquitting the third appellant, convicted appellants 1 and 2 for the said offence and sentenced each one of them to imprisonment for life. Appellant No.4, who was charged and convicted under Section 302 read with 149 IPC., was also acquitted, but he was convicted under Section 323 IPC. for causing simple injury to the deceased Krishnan and on being convicted, appellant No.4 was sentenced to pay a fine of Rs.750/- with a default sentence of three months rigorous imprisonment. The appellants challenge their conviction and sentence in this appeal.

2. The case of the prosecution is as follows:-

The first appellant is the younger brother of P.W.3's husband. The second appellant is the son of the fourth appellant. The third appellant is the elder brother of the fifth appellant. Appellants 4 and 5 are co-brothers. The deceased, P.W.1, husband of the fifth appellant are brothers and P.W.3 is their sister. P.W.1 is the uncle of P.W.2. They were all residing at Veeramuthur village. A week prior to the date of incident, P.W.2 purchased an acre of land from one Dayalan and to irrigate the said land, P.W.3 went there and she was accompanied by Loganathan, her husband, and her son, P.W.2. Radha, daughter of P.W.3, informed P.W.1 that her mother, P.W.3, was beaten and cut by appellants 1, 2 and Munusamy. She informed that P.W.3 had been taken to Government Hospital, Sholinger. The deceased went to the hospital and on being informed that P.W.3 had been taken to the Government Hospital, Vellore, he went there. Thereafter, the witnesses returned to their houses. In respect of the incident, Loganathan, the husband of P.W.3, gave a complaint at the police station. The police filed a case against Munusamy, Narasimhan, Sekar and others. They were sent to Jail. The second appellant and the first appellant absconded. The first appellant gave a complaint against the deceased and the said complaint is Ex.P-15. On account of this, there was no love-lost between the families of the appellant and the deceased. Both criminal cases were pending on the relevant date.

3. On the mid night of 12/13.5.2001, P.W.1 was irrigating the lands and appellants 1 to 5 went there. The first appellant questioned P.W.1 as to the whereabouts of the deceased Krishnan. P.W.1 informed him that he has gone out for his work. The first appellant threatened him, that unless he tells him the truth, he will be cut. P.W.1 informed the first appellant that the deceased will return in a shortwhile. Appellants 1 to 5 went towards north. Thereafter, P.W.1 left the place immediately leaving the spade there itself, brought P.Ws.2 and 3, and followed the first appellant. At that time, the deceased was seen coming in the opposite direction in a motor cycle. The first appellant, with a knife, which he had in his hand, cut him on the head as well as on the forehead.

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He also cut the deceased on the shoulder. The deceased stopped his motor-cycle and the second appellant stabbed him repeatedly on the neck. The deceased attempted to run from the place chased by the third appellant, who stopped him from back. The first appellant cut him on both his hands followed by the second appellant, who stabbed him. The deceased requested the appellants not to cut him, but the fourth appellant beat him with a stick on his left hand and the fifth appellant instigated the fourth appellant not to leave him. On seeing P.W.1, the appellants rushed towards him and therefore, P.W.1 went and hide himself in a sugarcane field. There was sufficient light and the occurrence was witnessed by P.W.1 as well as by P.Ws.2 and 3. All the three were hiding themselves in the sugarcane field and at 6.00 a.m. went to the police station at Kondapalayam, where an oral complaint was given to P.W.12, the Sub Inspector of Police, at 6.30 a.m. The same was reduced into writing. The said statement is Ex.P-1. On the complaint, Ex.P-1, a case in Crime No.118 of 2001 was registered against the appellants under Section 302 IPC. and the printed first information report is Ex.P-14. The investigation in the crime was, thereafter, taken up by P.W.13, Circle Inspector of Police, Sholinghur.

4. P.W.13, on getting information over phone about the registration of a grave crime, reached the police station at 7.00 a.m., where he was given a copy of the printed first information report. He proceeded to the scene of occurrence and at 7.30 a.m., prepared an observation mahazar and a rough sketch under Exs.P-4 and P-17 respectively. P.W.9, the photographer, took photographs. The inquest was conducted between 8.30 a.m. and 10.30 a.m. over the dead body of the deceased in the presence of Panchayatdars and the inquest report is Ex.P-18. The officer seized M.Os.5 to 8 including the blood-stained earth and the sample earth from the scene of occurrence. He also seized a TVS motor cycle. He questioned witnesses and recorded their statements. After the inquest, the body was handed over to a Police Constable with a requisition to the doctor for conducting autopsy.

5. On receipt of the requisition, P.W.4, Assistant Surgeon, attached to Government Hospital, Sholinghur, conducted autopsy on the body of Krishnan and found the following external injuries:-

1. An incised wound on the right side of forehead sized 5cm x 3cm x ½ cm.

2. An incised wound on the right ear 4 x ½ through and through.

3. A penetrating wound on the right cheek sized 2 x 1 x 1 cm.

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4.A penetrating wound on the left side of upper aspect of neck 4x2x1 cm in size.

5.A penetrating wound on the lower part of left side of neck 2x1x3cm.

6.An incised wound, in front of left shoulder sized 4x1x ½ cm.

7.An incised wound on the tip of right shoulder sized 2 cm x 1 ½ cm x ½ cm.

8.A lacerated wound on the upper part of right side of back sized 4 cm x 2 cm x ½ cm.

9.Deformity of left forearm with irregular lacerated wound sized 6 cm x 3 cm x 2 cm. Fracture (B) bones of left forearm. Fractured bones protruding through the wounds.

10.A penetrating wound above the umbilicus sized 4 cm x 2 cm x parieta deep.

11.A penetrating wound on the left side of upper aspect of back sized 3x1 ½ cm x 2 ½ cm.

12.A penetrating wound on the outer part of upper aspect of left side of back sized 3x1 ½ x viscera deep.

13.A lacerated wound on the occipital area of scalp sized 4 cm x 2 cm x 1 cm to 2 cm x 1 cm x 1 cm on the lower part of back.

The doctor issued Ex.P-3, the post-mortem certificate, with his opinion that the deceased died on account of shock and haemorrhage due to multiple injuries including fracture of bones and injuries to vital organs, viz., spleen and kidney, and death would have occurred about 9 to 11 hours prior to autopsy.

6. P.W.13, continuing with his investigation, searched for the appellants, but they were found absconding. He forwarded the material objects to Court for sending them for chemical analysis. On 29.5.2001, on coming to know that the appellants have surrendered, he filed a petition and took them into police custody. On 30.5.2001, they were questioned at the police station. The first appellant gave a statement and the admissible portion is Ex.P-19 and the admissible portion of the statement given by second appellant is Ex.P-20. In

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pursuance of the said statements, the appellants took the police party and from behind the T.V.S. Quarters, produced M.Os.2 to 4, which were seized under the mahazars Exs.P-21 and P-22. On 2.6.2001, the doctor, who conducted autopsy, was questioned and the statement of the doctor was recorded. The weapons seized were also sent to Court for sending them for analysis. The final report was filed against all the appellants on 6.7.2001.

6. The appellants were questioned under Section 313 of the Cr.P.C. on the incriminating circumstances appearing against them. They denied all the incriminating circumstances. They did not examine any witness on their side.

7. The cause of death of Krishnan is not in dispute and the same stands established through the evidence of the doctor, P.W.4, who conducted autopsy on the body of Krishnan. It was he, who issued the post-mortem certificate, Ex.P-3, with his opinion that the death was on account of shock and haemorrhage due to multiple injuries to vital organs, viz., spleen and kidney and he has stated in his evidence that the injuries would have been caused by sharp edged weapons. On the medical evidence, we hold that the deceased Krishnan died on account of homicidal violence, which fact was neither disputed before the trial Court nor before this Court.

8. The prosecution before the trial Court examined three witnesses as eye witnesses. They were examined as P.Ws.1 to 3. The learned counsel appearing for the appellants submits that P.Ws.1 to 3 could not have witnessed the incident and the complaint alleged to have been given by P.W.1 at 6.30 a.m. could not be the real first information statement and there must have been some information to the police authorities much prior to 6.30 a.m. and the said information has been suppressed by the prosecution. The learned counsel submits that the present first information statement, Ex.P-1, must have been prepared after due deliberation by implicating the appellants on account of the existing civil and criminal disputes that were pending during the relevant date. In support of his plea, he drew our attention to the evidence of the witnesses and in particular, to the evidence of P.W.12.

9. We will now find out whether P.Ws.1 to 3 could have been present at the scene of occurrence and witnessed the occurrence. The case of P.W.1 is that while he was irrigating the fields, appellants 1 to 5 went there and after questioning the whereabouts of the deceased, went in search of him and that when the deceased was seen coming in the opposite direction in a T.V.S. Motor Cycle, he was surrounded and cut by appellants 1 to 3 and that the fourth appellant beat him on his head with a stick on the instigation of the fifth appellant. According to him, apart from him, P.Ws.2 and 3 also witnessed the incident and that after the occurrence all the three were

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hiding themselves in a sugarcane field for more than three hours and thereafter, P.Ws.1 and 2 went to the police station to give a complaint. The learned counsel submits that this evidence of P.W.1 that he and P.W.2 went to the police station and gave a complaint at 6.30 a.m. is destroyed by P.W.12, the Sub Inspector of Police, when she gave evidence in Court. The counsel submits that P.W.12 has stated that the complaint was registered by her at 1.00 a.m., that is, on the mid night of 12/13.5.2001. We perused the evidence of P.W.12 and even in the chief-examination, she has stated that at about 1.00 a.m. on the mid night of 12/13.5.2001, P.W.1 appeared at the police station and gave a complaint, which was reduced into writing and a crime was registered. P.W.12, the Sub Inspector of Police, who had given such evidence in chief-examination that the complaint was given at 1.00 a.m. by P.W.1, was not treated hostile. The Additional Public Prosecutor, trying to save the situation, wanted to infer this court that there should have been a typographical error, when the evidence of P.W.12 was typed. This answer by the Additional Public Prosecutor has no legs to stand in view of the definite statement made by P.W.12 in the chief-examination that at mid night on 12/13.5.2001, P.W.1 appeared and gave a complaint. If there was a mistake while typing and it was wrongly typed as 1.00 a.m., instead of 6.30 a.m., by the typist while recording the evidence of P.W.12, then the words "mid night" could not have been mentioned by P.W.12. The fact that P.W.12 has specifically stated that at mid night P.W.1 appeared and gave a complaint, therefore, shows that the complaint could not have been given at 6.30 a.m. by P.W.1 as claimed by him in Court and that there must have been an information at the police station even at 1.00 a.m. regarding the incident. The said statement given to the police officer at 1.00 a.m. is not before the Court and therefore, this Court cannot but take the view that it has been suppressed.

10. In the above background, it becomes relevant for this Court to consider the evidence of P.W.1. In the cross-examination, he has admitted that the police officers were at the scene of occurrence even at 6.00 a.m. and at that time, P.Ws.1 and 3 were at the police station. If the complaint was lodged at 6.30 a.m. as claimed by P.W.1, then the police officers could not have been present at the scene of occurrence at 6.00 a.m. and P.Ws.2 and 3 could not have been at the police station at that time. This answer of P.W.1, therefore, shows that P.Ws.2 and 3 have reached the police station much earlier to 6.00 a.m. and the police officers were at the scene of occurrence at 6.00 a.m. and examined P.W.1 at that time. This evidence of P.W.1 is also supported by P.W.2, who in his evidence, has stated that he was examined by the police officers at 6.30 a.m. If the complaint was really registered at 6.30 a.m. on 13.5.2001, then P.W.2 could not have been examined by the investigating officer at 6.30 a.m., as the complaint itself, according to the prosecution, came into

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existence only at that time. The fact that there must have been a first information statement even at mid night is strengthened by the admission made by P.W.2 in the cross-examination. While P.W.2 was cross-examined, he was asked, whether he had informed the police that he saw the dead body at 6.00 a.m., to which, he answered that he saw the dead body at 5.00 a.m. He went on to add that he did not inform the police that he and Radha, the daughter of P.W.3, reached the scene of occurrence and found Krishnan lying dead. When the investigating officer was in the box, it was elicited as a contradiction under Section 145 of the Evidence Act that P.W.2 informed the police officer, when his statement was recorded under Section 161 of the Cr.P.C., that he along with P.W.3 reached the place, where the deceased was lying dead, at 6.00 a.m. and saw the dead body. This shows that the earlier version of P.W.2 during the course of investigation is that the dead body of Krishnan was seen by him at 6.00 a.m. and if that be the case, the present version that he along with P.Ws.1 and 3 were present and witnessed the occurrence and thereafter they were hiding themselves in the sugarcane field cannot be true.

11. In the above background, we find it difficult to accept Ex.P-1 as the first information statement to the police and that there was an information to the police even at 1.00 a.m. regarding the incident, though P.Ws.1 to 3 have stated that after the incident, they were hiding themselves in the sugarcane field. The said fact is not found mentioned in Ex.P-1, the complaint, alleged to have been given by P.W.1 at 6.30 a.m. The investigating officer did not also notice any sugarcane field since he did not mention the sugarcane field in the observation mahazar. When the witnesses had a definite case that they were hiding themselves in a sugarcane field, it is the duty of the investigating officer to have verified during his investigation as to how far a sugarcane field was situate from the scene of occurrence. When P.W.6, the Village Administrative Officer, was in the box, he was cross-examined as regards the topography of the scene of occurrence and he was also questioned about the sugarcane field. He has stated that a sugarcane filed was in the village during the relevant period only at Karikkal Colony and the place, where the deceased was lying dead, is only a foot-path surrounded by thorns and bushes. This piece of evidence of P.W.6, therefore, shows that the evidence of P.Ws.1 to 3 that they were hiding in a sugarcane field cannot be true and that there must have been another first information statement with the police and the same has been suppressed and the witnesses P.Ws.1 to 3, who are related to the deceased have been projected as eye witnesses after preparing the present first information statement,Ex.P-1.

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12. In any event, in view of the above suspicious features, the appellants are entitled to the benefit of doubt and the same is given to them.

13. In the result, the appeal is allowed and the conviction and sentence imposed upon the appellants are set aside. It is reported that appellants 1 and 2 are in jail. They are directed to be released forthwith, unless they are detained in connection with any other cases. The bail bonds of appellants 3 to 5, if any, shall stand cancelled.

21.12.2004

bs/

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Principal Sessions Judge, Vellore.
2.The Inspector of Police, Sholinghur Police Station.
3.The Superintendent, Central Prison, Vellore.
4.The District Collector, Vellore.
5.The Director General of Police, Madras.
6.The Public Prosecutor, High Court, Madras.
7.The Judicial Magistrate, Sholinghur
8.-do- Thro' The Chief Judicial Magistrate, Vellore.

1 cc to M/s. T.S.Gopalan & Co., Advocate SR.56527

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